

## **REMARKS**

This amendment replaces the previously filed amendment of January 26, 2007 as remnants of the prior response to this Office Action were inadvertently left in.

Claims 1-17 are pending in this application. Claims 4-9, 16, and 17 were allowed. Claims 1-3 and 10-15 were rejected.

### **Allowed Claims**

Claims 4-9, 16, and 17 were allowed. Applicants thank the Examiner for the allowed claims.

### **Claim Objections**

Claims 1 and 2, lines 5 and 10 were objected to because of the following informalities: “the frame” should be changed to “the time frame”. This correction has been made in the amended claims.

Claims 4 and 13, lines 5 and 11 were objected to because of the following informalities: “the frame” or “one frame” should be changed to “the time frame”. This correction has been made in the amended claims.

Claim 4, line 12 was objected to because of the following informality: “one frame” should be changed to “the time frame”. This correction has been made in amended claim 4.

Claim 3, line 3 was objected to because of the following informality: “the steps of claim 1” should be changed to “the steps of claim 2”. This correction has been made in amended claim 3.

### **Claim Rejections under 35 U.S.C. § 112**

Claims 1 and 2 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Examiner found claim 1, line 13 “the frame” vague and indefinite. Applicants have amended claim 1 to overcome this rejection and request that

the rejection be withdrawn. Claim 2, line 16 “the frame” was found vague and indefinite for the same reasons as claim 1. Applicants have also amended claim 2 to overcome this rejection and request that the rejection be withdrawn.

**Claims Rejections under 35 U.S.C. § 103(a)**

Claims 1-3, 10-12, and 15 were rejected as being unpatentable over U.S. Patent 6,707,806 to Kato (hereinafter “Kato”) in view of U.S. Patent 6,404,776 to Voois et al. (hereinafter “Voois”). This rejection is respectfully traversed.

To establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. “The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure.” In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that a prima facie case of obviousness has not been established regarding claims 1-3, 10-15 because the prior art cited does not teach or suggest all the claim limitations.

With respect to amended claim 1, Applicants respectfully submit that neither Kato nor Voois teaches or suggests all the limitations of claim 1. In particular, the references do not teach or suggest the following element of claim 1: disclose “(A) identifying at least one portion of a time frame within the forward link, the identified portion of the time frame having available capacity for transmitting at least a portion of at least one previously unscheduled traffic stream in addition to any traffic streams previously scheduled to be transmitted over the forward link...”

Kato is directed to a wireless transmitter that transmits data with at least two different levels of required quality on the same wireless channel. The transmitter has a multiplexer that multiplexes the data into frames, each frame containing data with at least two levels of required quality, and a power controller that controls the transmitting power of each type of data separately within each frame, thus avoiding using excess transmit power. (Abstract) Each frame of data includes different types of data with different quality levels. (Col. 1, lines 55-57) A power controller controls the transmit power of

each type of data within each frame, in accordance with the quality requirement of the data type. (Col. 1, lines 59-64)

Voois is directed to a data processor having a controlled scalable input data. (Title) A multimedia communication arrangement processes and multiplexes different types of data, including data from an adaptive data rate data source and a nonadaptive data rate data source to increase data throughput over a communication channel. (Abstract) The rate at which data is collected from the adaptive data rate data source varies depending upon the available bandwidth of the modem. (Abstract) The transmission rate may be adjusted in response to the detected error rate. (Abstract) The method and apparatus of Voois are directed toward a videoconferencing application. (Col. 5, lines 4-5) A transmitting channel interface device is used to send processed data over the communication channel to the receiving channel interface device. The data that is presented to the channel interface device is collected from various types of data sources including a video camera, a microphone, a user control device, and a personal computer. (Col. 5, lines 17-21) The formatted data is communicated over a channel and is received by the channel interface device, which then presents the received data to a demultiplexer/data processing equipment (DDPE). The DDPE is set up to sort out the formatted data received over the channel according to instructions previously send by the multiplexer/data processing equipment (MDPE). The demultiplexed data is then present to the appropriate output source equipment, including audio data to a speaker, video data to a monitor, and control data to external equipment for subsequent processing. (Col. 5, lines 32-42)

After collecting the data from the data sources the multiplexer formats the collected data for transmission over the communication channel. In order to communicate with multiple sources over a single communication channel, the sending and receiving terminals agree on a set of predetermined packet formats known as multiplex table entries, stored in a multiplex table. (Col. 6, lines 57-64) The pre-formatted packets draw data from high priority sources first in building packets of data. (Col. 6, lines 64-67) The amount of data drawn from the video codec buffer is determined as a function of the space available in the modem buffer. (Col. 8, lines 47-49) After preparing the packets the packets are sent to the modem to be transmitted. (Col. 9, lines 20-22)

Applicants respectfully submit that neither Kato nor Voois teaches or suggests the limitation “(A) identifying at least one portion of a time frame within the forward link, the identified portion of the time frame having available capacity for transmitting at least a portion of at least one previously unscheduled traffic stream in addition to any traffic streams...” Kato clearly does not teach or suggest this limitation. Voois does not teach or suggest the limitation because Voois is directed toward a video conferencing application where all data streams must be transmitted. There are no unscheduled traffic streams taught or suggested in Voois. Furthermore, Voois determines the amount of data to be drawn from the video codec buffer as a function of the space available in the modem buffer, not the space available within a transmission frame. The pre-planned packet formats in Voois teach the scheduled nature of the transmissions and are intended to deal with various transmission conditions that may be encountered. Therefore, Applicants respectfully submit that neither Kato nor Voois teach or suggest the limitation “(A) identifying at least one portion of a time frame within the forward link, the identified portion of the time frame having available capacity for transmitting at least a portion of at least one previously unscheduled traffic stream in addition to any traffic streams...” and request that the rejection to amended claim 1 be withdrawn.

Claim 2 is allowable for the same reasons given above for amended claim 1.

Claims 3 and 15 are each allowable as depending directly from an allowable base claim.

Claims 10-12 are each allowable as depending directly or indirectly from an allowable base claim.

Claim 13 is allowable for the same reasons given above for amended claim 1.

Claim 14 is allowable as depending directly from an allowable base claim.

### REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

Dated: January 29, 2007

By: /Roberta A. Young/

Roberta A. Young, Reg. No. 53,813  
(858) 658-5803